(2)

No. 06-1520

IN THE

Supreme Court of the United States

THE LOCAL CHURCH, LIVING STREAM MINISTRY, *ET AL.*,

Petitioners,

v.

HARVEST HOUSE PUBLISHERS,
JOHN ANKERBERG, AND JOHN WELDON

Respondents.

On Petition for Writ of Certiorari to the Court of Appeals for the First District of Texas

BRIEF OF CHRISTIAN RESEARCH INSTITUTE, ANSWERS IN ACTION, NEIGHBORING FAITHS PROJECT, HANK HANEGRAAFF, GRETCHEN PASSANTINO, JOHN MOREHEAD AND RUTH A. TUCKER *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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INTERESTS OF THE *AMICI CURIAE*[1]

Amicus curiae **Christian Research Institute** (CRI) is an organization that provides carefully researched information regarding cults and is the largest apologetics ministry in the world. *Amicus curiae* **Answers in Action,** with co-founder Gretchen Passantino, is a non-profit organization based in Costa Mesa, California, that produces articles and newsletters and sponsors classes and seminars in apologetics, evangelism, philosophy, and theology. *Amicus curiae* **Neighboring Faiths Project** with its founder, John Morehead, is an evangelical apologetics organization that provides research and writing in the area of new religious movements. *Amicus curiae* Dr. Ruth A. Tucker, is an evangelical author and former Professor of Missions at Calvin Theological Seminary.

These amici understand from their many years of experiences studying and writing about cults that there is no label more damning and destructive that can be attached to a religious group. Amici agree that the Establishment Clause protects from defamation liability describing a group as a "cult" in a *theological* sense (*i.e.* that the group is "heretical" or departs from historical Christianity). However, this case is about labeling a group a "cult" in a *secular* sense, and attributing abhorrent—even criminal—conduct to the group, including such things as child molestation, rape, and murder. Amici are concerned that if religious publishers and broadcasters are granted immunity to freely, and falsely, tar reli-

[1] Pursuant to Rule 37.6, *amici* affirm that no counsel for a party authored this brief in whole or in part and that no person other than *amici* and their counsel made a monetary contribution to its preparation or submission. The parties' letters consenting to the filing of this brief have been filed with the Clerk's office. Outside counsel for *amici*, Douglas W. Alexander, served as lead counsel for petitioner in this case in the petition for review proceeding before the Supreme Court of Texas. Mr. Alexander has since ceased to represent Petitioner in this matter.

gious groups in such a manner, the result will be to silence such groups merely because they are not "mainstream."

None of the amici is a party to this proceeding. Amici urge this Court to grant certiorari.

INTRODUCTION AND SUMMARY OF ARGUMENT

As the Alaska Supreme Court has recognized, the Establishment Clause protects from defamation liability describing a religious group as a "cult" in a *theological* sense. However, as the Seventh Circuit has recognized, falsely using the label "cult" in the *secular* sense is subject to defamation liability. The court below held otherwise, concluding that, because "cult" is a religious term per se, its use is never actionable in defamation.

This case lies at the intersection between the Establishment Clause and the law of defamation. Where, as here, a publication falsely labels a religious group a "cult" in the *secular* sense, and attributes to such group abhorrent, and even criminal, conduct, the Establishment Clause should not protect such speech. Yet the court below held that such speech is protected. This Court should grant certiorari to clear up the confusion that lies at the heart of First Amendment jurisprudence.

ARGUMENT

I. The court of appeals' sweeping holding that the term "cult" is not capable of defamatory meaning—even when criminal and abhorrent conduct is ascribed to those labeled with that term—raises significant concerns in the religious community because it allows religion to be used as a cloak for intentional, and potentially destructive, defamation of religious groups.

The court of appeals holds in sweeping fashion that the term "cult" is not capable of defamatory meaning because it is per se an "ecclesiastical" term:

> [W]e conclude that being labeled a "cult" is not actionable because the truth or falsity of the statement depends on one's religious beliefs, an ecclesiastical matter which cannot and should not be tried in a court of law.

Harvest House Publishers v. Local Church, 190 S.W.3d 204, 211 (Tex. App.—Houston [1st Dist.] 2006, pet. denied). The fundamental problem with this statement, from the perspective of those in the religious community, is that the term "cult" is *not* merely an *ecclesiastical* or *theological* term. To the contrary, the term "cult" in general social discourse is most often used in a *sociological* or *secular* context, referring to a group whose practices are fraudulent, deceptive, authoritarian, manipulative, morally reprehensible, and criminal. Such use does not necessarily include a theological framework (*i.e.*, referring to a group whose behavior is "cultic" and whose beliefs diverge from "accepted" doctrines of historic Christianity[2]).

The court of appeals' decision confuses this distinction and, in so doing, establishes dangerous precedent. In CRI's 40 years of professional experience, the term "cult" and its behavioral connotation has frequently been utilized as a code

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[2] *Christianity in Crisis*, Hank Hanegraaff, pp. 42-43. The authors of ECNR also acknowledge this issue on pp. XXI-XXII of ECNR.

word to impute crimes and immorality to groups labeled as cults. This use of the term has been a matter of concern for Christian apologists and secular religious scholars who write about other religions.

As far back as the 1970s, authors have acknowledged the use of the term "cult" by "secular anti-cultists" to refer to groups that are purportedly "sociologically destructive.[3]" *Christianity Today* recently discussed the problematic use of the term "cult" in society:

> Still, the word cult is a problem. For better or worse, it has shifted in meaning and has become associated with bizarre groups like the People's Temple and Heaven's Gate. To write about cults and include groups like the Local Church is to plant an unfortunate association in people's minds—no matter how many qualifications are made. We would all be wise to drop the word, except for the most extreme instances.[4]

By broadly holding that under no circumstance is the term "cult" actionable—based on a failure to distinguish between the *theological* and *secular* uses of the term—amici are concerned about the precedent established by the Texas court of appeals' decision. That decision, under the rubric of "cult as a religious term," essentially allows religious publishers and broadcasters to freely tar those religious groups with whom they disagree. Not only may publishers freely label such groups "cults," but they can also ascribe to such groups, under the "cult" label, secular wrongdoings—including criminal conduct—that in any other nonreligious context would be actionably defamatory. This threatens to upset the balance between an entity's right to free speech versus the protection of the reputations and religious liberties of small religious groups. In other words, the Texas court's

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[3] *Christianity in Crisis* at 43.

[4] *Christianity Today*, March 2006 issue.

decision essentially allows religion to be a cloak for intentional defamation, under circumstances where no such cloak should exist.

II. This Court should clarify the law at the intersection of the Establishment Clause and the law of defamation—falsely labeling a group a "cult" in the *theological* sense should not be actionable, but falsely labeling a group a "cult" in a *secular* sense should be.

Amici agree that describing a religious group as a "cult" in a *theological* sense, even if false, should be protected from being actionably defamatory by the Establishment Clause. This was essentially the holding of the Alaska Supreme Court in *Sands v. Living Word Fellowship*, 34 P.3d 955, 960 (Alaska 2001) (describing a religious group as a "cult" was protected by the First Amendment where it constituted nothing more that a "pronouncements of religious belief and opinion.").

On the other hand, falsely labeling a group a "cult" in a *secular* sense should be actionable, given the opprobrium attached to that term in modern society.[5] The Seventh Circuit recognized this point in *Kennedy v. Children's Service Society of Wisconsin*, 17 F. 3d 980, 984 (1994) (holding that "statements that the Kennedys were unsuitable parents because they belonged to a cult could give rise to a claim of defamation."). The result should be no different merely because the person doing the false labeling happens to be a religious publisher or broadcaster, and that the group falsely labeled a "cult" happens to be a religious group. Yet the decision of the court below conflicts with the Seventh Circuit's

[5] *See Hooper v. Pitney Bowes, Inc.*, 895 S.W.2d 773, 776 (Tex. App.—Texarkana 1995, writ denied) ("In these times, a high degree of opprobrium has attached to terms such as 'cultist,' [and] 'occult'. . . . False accusations against or characterizations of persons using those and similar terms, we believe, can certainly be considered to be beyond all bounds of decency and to be atrocious and utterly intolerable in a civilized society.").

holding because it concludes that the term "cult" is religious per se and therefore never actionable. The Court should grant certiorari to resolve this conflict.

III. The Establishment Clause is not implicated in this case because those labeled "cults" in the ECNR were so labeled not merely in the *theological* sense but also in the *secular* sense, and the Local Church's claims are based on the latter not the former.

Unlike in *Sands*, 34 P.3d at 960, where the term "cult" was used exclusively in the *theological* sense, here it was used in the *secular* sense as well. This is revealed by the text of the ECNR itself. The authors make expressly clear that they intend for readers to also interpret the term in the *secular* sense, accompanied by its full contemporary opprobrious force:

> Used properly, the term 'cult' also has particular value for secularists who are unconcerned about theological matters yet very concerned about the ethical, psychological and social consequences of cults... ...a term like 'heretical' [is] irrelevant to many people. While 'spiritual counterfeits' is good, it does not convey the contemporary force of the term cult. But as we considered it more, given its widespread cultural acceptance, we retained the term ['cult'] because, overall, no designation seems quite as accurate or apropos....

ECNR at XXI (emphasis added). Thus, the authors make clear that, unlike in *Sands*, labeling those in the books as "cults" is not merely making "pronouncements of religious belief and opinions." *Sands*, 34 P.3d at 960.

The authors then punctuate the *secular* nature in which they use the term "cult," by ascribing to "cults" abhorrent conduct, not related to religion *per se*, including encouraging prostitution, raping women, molesting children, engaging in drug smuggling, and committing murder. ECNR at XXV.

The Establishment Clause does not bar suits over such allegations of abhorrent *secular* conduct.

The court below relied on quotes that the ECNR Introduction "centers on doctrinal and apologetic issues" and "religious cults" but ignored that the term "cult" is not used exclusively in the *theological* sense. Blanket immunity from defamation liability should not lie merely because a publication contains *some* statements that are protected by the Establishment Clause because they constitute nothing more than expressions of religious belief and opinion, when, as here, the publication also contains *other* statements that clearly fall outside the protection of the Establishment Clause.

While First Amendment protections extend to all expressions of belief and critiques of belief, no such protection obtains when the speech in question consists of reputationally injurious falsehoods whose falsity can be objectively demonstrated without recourse to any theological matter. Such a ruling opens the door to matters of serious concern in the religious community for groups like the Local Church whose members live not only in the United States but also in certain religiously intolerant societies worldwide. In those societies, having abhorrent conduct ascribed to the religious group not only severely damages the group's reputation but could potentially be used by intolerant governments as a justification to persecute the members of that group.

CONCLUSION

For these reasons, amici urge this Court to grant certiorari and reverse the decision of the court below.

Respectfully submitted,

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